

RULES PROCESSING TEAM

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*e-mail*

Minerals Management Service  
Attn: Rules Processing Team [RPT]  
381 Elden Street  
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28 February 2006

**Re: RIN 1010-AD30, Alternate Energy-Related Uses on the Outer Continental Shelf**

To the Rules Processing Team:

Please enter these comments into your official record on behalf of the National Marine Wildlife and Habitat Committee, Sierra Club. By presenting our concerns as volunteer activists, we express our support for the more detailed comments submitted by a coalition of national environmental organizations.

**General Comments**

Our top priority is stewardship of our public trust waters for the long term health and functioning of marine ecosystems. Because of significant concerns regarding the effects of global climate change on our marine ecosystems, we seek to promote the development of energy sources that provide a genuine alternative to fossil fuels. Clearly this development must be compatible with these marine ecosystems and minimize disruptions. In short, we decidedly do not wish to destroy these ecosystems in the name of defending them.

This new program must not treat these as conflicting goals, but rather build on and reinforce existing environmental laws and cooperate with rather than compete with existing regulatory programs such as are administered by NOAA and EPA. We seriously question the assumption by MMS that these regulations should be devised for any other purpose besides leasing the OCS for renewable energy projects, and definitely not for facilitating unrelated uses of energy infrastructure.

New renewable energy projects should replace at a smaller scale the infrastructure needs for fossil fuel extraction. The so-called energy "footprint" in the OCS should thereby be decreased, not only reducing the threat of global climate change but also the displacement of marine environment. As we pointed out in our comments to you on your previous Five Year Leasing Plan for Oil and Gas, the events of 9/11 demonstrated the folly of placing our nation's energy supply at risk to terrorism by expanding on massive offshore infrastructure. Ironically we were proven correct during the Katrina and Rita destruction, a natural disaster greatly exacerbated by this linear thinking that "more and bigger is better."

It is our hope that MMS will draw on the experience of countries with a history of renewable energy development offshore, to replicate successes and to avoid repeating mistakes. Most of all, MMS must avoid the pitfalls of the Sorcerer's Apprentice and acknowledge that we are about to enter uncharted territory without the benefit of supernatural insight -- we do not want to risk unleashing or deranging forces beyond human control -- such as could be the case in any attempt to harness the energy of the Gulf Stream.

#### Program Area

To reiterate our position, top priority in siting renewable energy projects and establishment of regulatory requirements must be the avoidance of harm (including cumulative and synergistic impacts) to marine ecosystems. Put another way, we call for application of the Precautionary Principle throughout.

A. Access to OCS lands and resources for exploration and development should be fair and equitable based on the ability to produce renewable energy and to avoid harm. This does not mean that access to all areas must be provided, however, so for example, Essential Fish Habitat (EFH), areas of high seismic activity, unstable geologic structures, and candidate sites for designation as Marine Protected Areas should be considered off limits for alternative energy as it should be for fossil fuel extraction. MMS should work with NMFS Office of Habitat Protection, the MPA Center, and USGS to identify these.

D. MMS must guard against granting leases being acquired mainly for speculation, with any eye to market fluctuations or the potential for buyback. Monitoring must be set up to address biological and oceanographic alterations and a mechanism created for prompt response such as changed conditions or in extreme cases revocation of a lease. This priority must be made clear to applicants at the earliest stage in order to prevent a rush of ventures in an arena not yet well understood.

E. MMS should utilize existing data to identify proactively areas most suitable for each category -- wind, tidal, wave -- and separate these to avoid conflicts.

I. Concurrent developments should not be permitted.

#### Specific Questions

3. Before considering foreclosure of competing public use of an area, MMS should certify a definitive need for the project and ability to meet that need (e.g., access to distribution networks), as well as most efficient use of the energy produced. The "fair return" should be calculated on a sliding scale, tied to the monetary value of the project or of the forfeited public use over time. We do not want to repeat the experience of public lands with regard to outdated grazing fees or mining lease rates that have not been revisited and adjusted.

11. In deciding whether to approve a project, MMS should require that the alternative energy project will effectively move the country towards self-sufficiency, through sustainable use of renewable resources, with minimal adverse environmental and economic impacts. Energy production should not necessarily be given preference over other sustainable uses just for its own sake.

#### Environmental Information, Management, and Compliance

- K. Baseline information about the biogeographic area, the specific site, its ecological functions, and its historical, current, and potentially competing uses should be prepared by MMS in cooperation with relevant agencies and the public.
- L. Risk assessment, for example potential for interference with migration of marine life, should be based on adequate monitoring depending on the species and should account for changes caused by climate, weather, season and other factors. Lacking sufficient data, MMS should provide for conditional or experimental leases and permits subject to change or revocation if justified by new information.
- M. Similar provision must be made for advances in technology and methods – they should trigger new requirements.
- N. Conversion from fossil fuel extraction to renewable energy sources should be expedited in order to lessen the multiple threats to the environment, but as we said at the outset this should not be seen as a license to harm the ecosystem with novel techniques. The traditional institutional MMS priority of expediting development must be tempered by precaution.
- 12. Many states have developed frameworks such as ocean management plans, or bay management programs intended to increase local input into coastal management decisions – these should be given a place in the MMS process.
- 15 Impacts that require long term monitoring include not only interference with marine life, but also such side effects as discharges from biofouling remediation, attraction of “nuisance” animals, and as already mentioned the indirect effects on ocean and estuarine dynamics.
- 16 We strongly object to area wide leasing or easements as we object to categorical exclusions from any part of the regulatory regime.
- 17 Monitoring is the sole responsibility of MMS.

#### Operational Activities

MMS must accept full responsibility from “cradle to grave” and assure that full liability for environmental harm is assumed by the lessee from the construction stage through its operating life, and that no structures are abandoned or handed on to another party for purposes unrelated to renewable energy production. To this end we recommend performance bonds be required. We oppose attempts by MMS to wheedle ways out of this responsibility in the name of “win-win” deals. Without wishing to stifle innovation, we believe that renewable energy projects are too important to be wasted or taken on lightly.

#### Payments and Revenues

In light of recent royalty shortfalls from oil and gas leases, we emphatically discourage further elaborations on the theme of “royalty relief” or “royalty in kind” for this new program. Keep it simple and straightforward – the privilege of using the public trust areas for profit calls for a fair return to the public. At least as important in aid of converting to renewable energy, is to establish a level playing field so that the many hidden subsidies do not disguise the actual cost of energy or tilt the market toward fossil fuels.

#### Coordination and Consultation

In light of the anticipated nearshore and onshore effects of this program, MMS should make every effort to include federal resource agencies, states, local governments, and the public at large from the earliest stages. Transparent processes for cooperative decisionmaking should be developed with their participation.

Thank you for the opportunity to comment at this preliminary stage. Please keep us informed and involved as this program development continues.

Sincerely,

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